

No. 86-421

Supreme Court, U.S.  
**E I L E D**

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IN THE  
**Supreme Court of the United States**

October Term, 1986

BOARD OF DIRECTORS OF ROTARY  
INTERNATIONAL, et al.,

*Appellants,*

v.

ROTARY CLUB OF DUARTE, et al.,

*Appellees.*

ON APPEAL FROM THE COURT OF APPEALS OF THE  
STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

BRIEF OF THE STATES OF MINNESOTA,  
CONNECTICUT, ILLINOIS, LOUISIANA,  
NEW JERSEY, OHIO, OREGON, TEXAS,  
UTAH AND WISCONSIN AS AMICI CURIAE  
IN SUPPORT OF APPELLEES

HUBERT H. HUMPHREY, III  
Attorney General

State of Minnesota

RICHARD S. SLOWES

Assistant Solicitor General

Counsel of Record

515 Transportation Building

Saint Paul, Minnesota 55155

Telephone (612) 296-6473

Attorneys for Amicus Curiae

State of Minnesota

*Of Counsel:*

PETER M. ACKERBERG

Special Assistant

Attorney General

(Attorneys General of Counsel listed inside)

## ATTORNEYS GENERAL OF COUNSEL

**JOSEPH I. LIEBERMAN**

Attorney General  
State of Connecticut

**NEIL F. HARTIGAN**

Attorney General  
State of Illinois

**WILLIAM J. GUSTE**

Attorney General  
State of Louisiana

**W. CARY EDWARDS**

Attorney General  
State of New Jersey

**ANTHONY J. CELEBREZZE, JR.**

Attorney General  
State of Ohio

**DAVE FROHNMAYER**

Attorney General  
State of Oregon

**JIM MATTOX**

Attorney General  
State of Texas

**DAVID L. WILKINSON**

Attorney General  
State of Utah

**DONALD S. HANAWAY**

Attorney General  
State of Wisconsin

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**STATEMENT OF INTEREST**

The Amici States, through their Attorneys General, respectfully offer this brief in support of appellees. The Amici States have enacted legislation designed to eradicate discrimination against their female citizens in public establishments.<sup>1</sup> These statutes are designed to remove barriers to economic advance-

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<sup>1</sup> See, e.g., Minn. Stat. § 363.03, subd. 3 (1986).

ment and political and social integration that have historically plagued women. The enforcement of a male-only membership rule by the international parent organization of approximately 20,000 Rotary Clubs, whose membership recruitment is not highly selective, whose members enjoy business contacts and various commercial programs and which encourages attendance by non-members, undermines the states' interest in eradicating discrimination against its female citizens.

## SUMMARY OF ARGUMENT

This Court, in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), recognized both "intrinsic and instrumental" features of constitutionally protected freedom of association. *Id.* at 618. The intrinsic aspect secures certain intimate human relationships against undue state intrusion. The instrumental aspect seeks to preserve First Amendment liberties by recognizing an associational right for the purpose of engaging in speech, assembly, petition for the redress of grievances, and the exercise of religion. *Id.* Neither the intrinsic nor the instrumental aspects of appellants' right to association are impaired by the decision below under the guiding principles of *Roberts*. As to freedom of intimate association, Rotary International resembles a large business organization far more than it resembles the intimate personal relationships entitled to constitutional protection. Furthermore, the membership of local Rotary clubs is drawn from a broad cross-section of the local community and is not highly selective. As to freedom of expressive association, the judgment below does not impair the ability of Rotary International or its constituent clubs to express their views, and any minimal impairment that may result is justified by California's compelling interest in eradicating discrimination by business establishments against its female citizens.

## ARGUMENT

### I. APPELLANTS FREEDOM OF INTIMATE ASSOCIATION IS NOT IMPAIRED BY THE JUDGMENT BELOW.

In *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), this Court reaffirmed its recognition that “certain kinds of highly personal relationships” must be afforded “a substantial measure of sanctuary from unjustified interference by the State.” *Id.* at 618. The kinds of highly personal relationships afforded such protection are characterized

by such attributes as relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship. As a general matter, only relationships with these sorts of qualities are likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty. Conversely, an association lacking these qualities—such as a large business enterprise—seems remote from the concerns giving rise to this constitutional protection.

*Id.* at 620.

In determining the limits of the states’ authority to interfere with freedom of intimate association, the Court has indicated it will make “a careful assessment of where that relationship’s objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments.” *Id.* The relevant factors may include “size, purpose, policies, selectivity, congeniality, and other characteristics that in a particular case may be pertinent.” *Id.*

Several features of the Rotary organization place it well within the “most attenuated” end of the spectrum of personal



attachments. The first pertinent characteristic is the structure and size of the Rotary organization whose stated purpose is to "provide humanitarian service, encourage high ethical standards in all vocations, and help build goodwill and peace in the world." Jt. App. at 35. Rotary International is a worldwide association of 19,788 local clubs in 157 countries. It has no human members; only local Rotary clubs are members. Appellants' Brief at 7. Such a far-flung, large association of organizations is hardly among those "highly personal relationships" deserving of constitutional protection from state interference. As appellants note, "[t]he constitutional right to freedom of association belongs in the first instance to an individual." Appellants' Brief at 22.

Second, the commercial focus of the Rotary organization "seems remote from the concerns giving rise to this constitutional protection." *Roberts*, 468 U.S. at 620. Rotary International has an international staff of 350 persons, publishes an official magazine received by nearly one-half million readers, and receives license fees and annual royalties on sales of merchandise permitted to bear the Rotary emblem. *Rotary Club of Duarte v. Board of Directors of Rotary International*, 224 Cal. Rptr. 213, 222-24 (Cal. Ct. App. 1986). A club member is not merely an individual, but also "the representative of his vocation in that community." Jt. App. at 22 (emphasis in original). Rotary clubs sponsor business relations conferences where "[t]he Rotarian learns management techniques that help improve his own business or professional skills." *Id.* at 14. A Rotary vocational service program is designed to "create understanding within and between the various occupations in the community and ensure improved ethical and practical relations among them." *Id.* at 22. The study of "actual business problems" by Rotarians is encouraged. *Id.* at 24. The "adop-



tion of codes of correct practices by trade associations" is encouraged by some Rotary Clubs. *Id.* at 28. Rotarians exchange "confidential business advice and assistance." *Id.* at 40.

Two additional factors that counter appellants' invocation of freedom of intimate association are the minimally selective recruitment procedure of Rotary clubs and non-private nature of Rotary club meetings. The active membership of each club is based on having, in general, at least one representative of each business or profession within the community. Appellant's Brief at 7. As Rotary acknowledges, "[t]his would seem to be a restrictive provision, but its purpose is to produce an inclusive, not exclusive, membership, making possible the recognition of all useful local occupations, and enabling the club to be a true cross-section of the business and professional life of the community." *Jt. App.* at 84. Business and activity classifications are numerous, often based on the classified pages of the local telephone directory. *Id.* at 37. The classifications can, for membership recruitment purposes, be subdivided into specialties, such as automobile insurance, fire insurance, casualty insurance, etc., *id.* at 87, thus assuring a vast public pool of potential members that constitutes, in the view of Rotary, "a true cross-section—a microcosm—of the business and professional life" of the community. *Id.* at 86. There is no limit to the size of a local Rotary club, at least one of which has 900 members. Appellants' App. at G-60. Rotary International advises its member clubs that they may hold joint meetings with other service clubs and encourages club members to invite non-Rotarians to attend meetings. *Jt. App.* at 25, 39, 66. Women relatives of Rotarians are commended by Rotary International for supporting Rotary club activities. *Id.* at 44-5. Finally, the time, date and place of Rotary meetings are publicized by news releases prepared for distribution to news

media. *Id.* at 95-6. Thus, the Rotary organization recruits its membership from a significant portion of the general public and thrives on public attention.

The large size and commercial aspects of the Rotary organization, its minimally selective membership recruitment, its invitation to attendance by non-members, the support it welcomes from non-member women and its efforts to publicize its meetings, places the Rotary organization at a point "remote from the concerns giving rise to this constitutional protection [of freedom of intimate association]." *Roberts*, 468 U.S. at 620. The associations sought to be protected by appellants are not distinguished by "smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship." *Id.* This Court has accorded constitutional protection only to a narrow range of highly personal intimate associations, such as marriage, precisely because they are "not commercial or social projects." *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965). To accord appellants such a protection would mark a major departure for this Court by greatly expanding the kinds of associations accorded the constitutional protection of freedom of association.

Whatever satisfying personal relationships individual Rotary club members may derive from their membership, Rotary International and its constituent clubs "lack the distinctive characteristics that might afford constitutional protection to the decision of its members to exclude women." *Roberts*, 468 U.S. at 621.

## II. APPELLANTS' FREEDOM OF EXPRESSIVE ASSOCIATION IS NOT IMPAIRED BY THE JUDGMENT BELOW.

The freedom of expressive association seeks in part to prevent the state from unjustifiably interfering "with the internal organization or affairs of the group." This restriction on state activity is required because "forc[ing] the group to accept members it does not desire . . . may impair the ability of the original members to express only those views that brought them together." *Roberts*, 468 U.S. at 623. However, Rotary eschews the expression of opinion as an organization. It seeks instead to offer a forum for the expression of views rather than to advance views of its own. The role of Rotary is not to advance particular viewpoints, but merely to "provide a forum for the presentation of public questions," assuring "that both sides be adequately represented" when controversial questions are aired at club-sponsored events. *Jt. App.* at 58. The Rotary Manual of Procedure commands that "no corporate action or corporate expression of opinion will be taken or given by R.I. [Rotary International] on political subjects." *Id.* at 59. Local clubs are instructed by Rotary International to "not adopt resolutions of any kind dealing with specific plans relating to international affairs." They "should not direct appeals for action from clubs in one country to clubs, peoples, or governments of another country or circulate speeches or proposed plans for the solution of specific international problems." *Id.* Because the Rotary organization does not attempt to advance any particular views, the judgment of the court below does not hamper "the organization's ability to express its views," *Roberts*, 468 U.S. at 624. Appellants have failed to demonstrate that the judgment of

the court below "imposes any serious burdens on the male members' freedom of expressive association." *Id.* at 626.

Furthermore, any minimal infringement on the right of Rotarians to associate for expressive purposes resulting from the judgment below may be justified by "compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 623. The states have a compelling interest in "assuring its citizens equal access to publicly available goods and services." *Id.* at 624.

The Rotary organization is in significant respects a public organization, and it clearly makes available services, such as business contacts and commercial programs, to its members. It is public in its membership recruitment and the use of publicity in local media to attract and retain members. The services available to members include business contacts and business relations conferences where "[t]he Rotarian learns management techniques that help improve his own business or professional skills." *Jt. App.* at 14. In assuring equal access to such publicly available services, the state protects its female citizens from a denial of individual dignity and protects society from a denial of the "benefits of wide participation in political, economic, and cultural life." *Roberts*, 468 U.S. at 625.

Any abridgment of appellants' freedom of expressive association created by the judgment of the Court below "is no greater than is necessary to accomplish the State's legitimate purposes." *Id.* at 628. Private discrimination has never been accorded affirmative constitutional protection. In *Norwood v. Harrison*, 413 U.S. 455 (1973), this Court held that a state may not loan textbooks to a segregated school:

[A]lthough the Constitution does not proscribe private bias, it places no value on discrimination as it does on

the values inherent in the Free Exercise Clause. Invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections.

*Id.* at 469-70.

## CONCLUSION

Appellants have failed to demonstrate that the judgment of the court below imposes any serious burdens on its male members' freedom of intimate or expressive association. Therefore, the judgment of the court below should be affirmed.

Dated: January 28, 1987.

Respectfully submitted,

HUBERT H. HUMPHREY, III

Attorney General

State of Minnesota

RICHARD S. SLOWES

Assistant Solicitor General

*Counsel of Record*

515 Transportation Building

Saint Paul, Minnesota 55155

Of Counsel:

PETER M. ACKERBERG

Special Assistant

Attorney General

Telephone: (612) 296-6473

*Counsel for Amicus Curiae*

*State of Minnesota*

Attorneys General of Counsel:

JOSEPH I. LIEBERMAN

Attorney General  
State of Connecticut

NEIL F. HARTIGAN

Attorney General  
State of Illinois

WILLIAM J. GUSTE

Attorney General  
State of Louisiana

W. CARY EDWARDS

Attorney General  
State of New Jersey

ANTHONY J. CELEBREZZE, JR.

Attorney General  
State of Ohio

DAVE FROHNMAYER

Attorney General  
State of Oregon

JIM MATTOX

Attorney General  
State of Texas

DAVID L. WILKINSON

Attorney General  
State of Utah

DONALD S. HANAWAY

Attorney General  
State of Wisconsin



